
DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife
and Plants; Proposal To Determine
Erigeron Rhizomatus (Rhizome
Fleabane) To Be a Threatened Species****AGENCY:** Fish and Wildlife Service,
Interior.**ACTION:** Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to list a plant, *Erigeron rhizomatus* (rhizome fleabane), as a threatened species under the authority contained in the Endangered Species Act of 1973, as amended. Approximately 20 populations are known, all of which are in New Mexico. The total number of individual plants is only about 200. This species' survival is threatened due to the

low number of plants, its restricted distribution, and the potential for habitat loss if inactive uranium mining in the area is ever reactivated. This proposal, if made final, will implement the protection provided by the Endangered Species Act of 1973, as amended, for this plant. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by June 25, 1984. Public hearing requests must be received by June 8, 1984.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Service's Regional Office of Endangered Species, 421 Gold Avenue, SW., Room 407, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Dr. Russell L. Kologiski, Botanist, Region 2 Endangered Species Staff (see Addresses above) (505/766-3972), or Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-2771).

SUPPLEMENTARY INFORMATION:

Background

Erigeron rhizomatus is in the aster family. The species was first collected in McKinley County, New Mexico, by R. C. Barneby in 1943 and was described by A. Cronquist in 1947. Approximately 20 populations are now known from 2 counties in New Mexico. Populations are known on the Cibola National Forest, in areas south of Fort Wingate in McKinley County, and from northwest of Datil in Catron County. These are the only areas in which this *Erigeron* has been found.

Erigeron rhizomatus is a perennial herb arising from horizontal underground stem, or rhizome. The leaves are narrow and oblong to linear, up to 1 centimeter long and 3 millimeters wide, and dark green in color. The flower heads are single, 13-16 millimeters wide, and blue or white in color. The stems are in clumps 25-45 centimeters high, and up to 30 centimeters across (Martin and Hutchins, 1981).

Erigeron rhizomatus grows in a zone of Chinle shale and associated soils in the piñon-juniper association at 2,190 to 2,400 meters elevation. Most plants are found on loose, decaying slopes of the Chinle shale formation.

Flowering is from May to June. The species appears to be reproducing well, and individuals of all age classes are present. The clumps of plants are all clones. Establishment of new plants by seed is rare, although a large volume of seed is produced (Fletcher, 1978; Sabo, 1981).

Most of the populations are in close proximity to inactive uranium claims. If exploration or mining is reactivated, there may be adverse impacts to the plants.

Federal action affecting this species began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the *Federal Register* (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4(c)(2) (now section 4(b)(3)(A)) of the Act, and of its intention thereby to review the status of the plant taxa named therein. On June 16, 1976, the Service published a proposed rule in the *Federal Register* (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to Section 4 of the Act. This list of 1,700 plant species was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document 94-51 and the July 1, 1975, *Federal Register* publication. *Erigeron rhizomatus* was included in the July 1, 1975, notice of review and the June 16, 1976, proposal. General comments received in relation to the 1976 proposal were summarized in the April 26, 1978 *Federal Register* publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. In the December 10, 1979, *Federal Register* publication (44 FR 70796), the Service published a notice of withdrawal of the June 16, 1976, proposal, along with 4 other proposals that had expired. *Erigeron rhizomatus* was included in category 1 on the list of plants under review for threatened or endangered classification in the December 15, 1980, *Federal Register* (42 FR 82480). Category 1 refers to taxa for which the Service presently has sufficient information to support the biological appropriateness of their being

listed as endangered or threatened species.

For *Erigeron rhizomatus*, the petition finding was made on October 13, 1983, that listing was warranted but precluded by pending listing actions in accordance with section 4(b)(3)(B)(iii) of the Act. Such petitions are recycled under section 4(b)(3)(C)(i) of the Act. This proposed rule constitutes the new required finding that the petitioned action is warranted, and the proposed rule is hereby published to implement the action in accordance with section 4(b)(3)(B)(iii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate the 1982 Amendments) set forth procedures for adding species to the Federal list. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to *Erigeron rhizomatus* Cronquist are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The main threats to *Erigeron rhizomatus* are from habitat disturbance, especially if there is ever a resumption of uranium mining. Most of the populations in the Datil and Sawtooth Mountains occur within or very close to extensive, currently inactive uranium claims and could be destroyed or severely damaged if the claim are ever reactivated and developed without planning for the species' protection. Road construction and resulting erosion also could have adverse impacts on *Erigeron rhizomatus* (Fletcher, 1978; Sabo, 1981).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* *Erigeron rhizomatus* is not presently desired by plant collectors. Collection for scientific study and threats from overutilization are small (Sabo, 1981). However, plants are more vulnerable than animals to taking pressures and because of its very low numbers, and restricted ranged, vandalism poses a threat to the survival of this species.

C. *Disease or predation.* Because the numbers of plants are so low, and the range very restricted, any disease could quickly eliminate this species.

D. *The inadequacy of existing regulatory mechanisms.* There are no State laws offering protection for

Erigeron rhizomatus. U.S. Forest Service regulations prohibit taking of plants on USFS lands (36 CFR 261.9(b)). These regulations are difficult to enforce in backcountry situations.

E. *Other natural or manmade factors affecting its continued existence.* The limited distribution (two New Mexico counties) and low number of plants (fewer than 200) make *Erigeron rhizomatus* especially vulnerable to habitat disturbances or other stresses.

Critical Habitat

No critical habitat is being proposed for *Erigeron rhizomatus* at this time. The Endangered Species Act in section 4(a)(3), as amended, requires that to the maximum extent prudent and determinable the Secretary shall designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. 50 CFR 424.12 states that designation of critical habitat is not prudent if the designation will increase taking threats or would not otherwise be beneficial to the species. *Erigeron rhizomatus* occurs only on U.S. Forest Service land. The Act requires all Federal agencies to carry out programs for the conservation of listed species. The U.S. Forest Service is aware of where *Erigeron rhizomatus* occurs, and will need to continue to take steps to protect its essential habitat once the species is listed. Also, all Federal agencies, including the U.S. Forest Service, are bound to avoid any actions which would jeopardize any listed species. Therefore, the determination of critical habitat would not provide any additional benefits for the plants. Critical habitat determinations, and publication of detailed maps, have the potential of creating taking pressures or encouraging vandalism by the public on any plant. Publication of critical habitat maps for *Erigeron rhizomatus* would enable the public to locate precisely where plants occur, and might lead to vandalism which could further threaten the species. Because the U.S. Forest Service knows where *Erigeron rhizomatus* occurs, and will need to continue to protect its habitat when the species is listed, and because a determination of critical habitat might impose a further threat to the plants, a determination of critical habitat is not considered prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions

against certain practices. Recognition through listing encourages and results in conservation actions by other Federal and State agencies and private groups and individuals. The Endangered Species Act requires that recovery actions be carried out for all listed species and these are initiated by the Service following listing. The protection required of Federal agencies are prohibitions on taking are discussed in part below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species which is proposed or listed as endangered or threatened. Provisions for Interagency Cooperation which implement section 7 of the Act are codified at 50 CFR Part 402 (now under revision, see proposal at 48 FR 29989; June 29, 1983). Section 7(a)(4) requires Federal agencies to informally confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species. This protection will now accrue to *Erigeron rhizomatus*. When a species is actually listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such species. If an agency determines that its actions may affect a listed species, the Federal agency must enter into formal consultation with the Service. *Erigeron rhizomatus* is known only from U.S. Forest Service lands. There are uranium mining claims in the vicinity of the majority of the populations in both the Datil and Sawtooth Mountains. The claims are presently inactive. If exploration or a resumption of mining were to occur, there is potential for much damage to the plants and habitat.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions which apply to all threatened plant species. With respect to *Erigeron rhizomatus* all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation

agencies. The Act and 50 CFR Section 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species, under certain circumstances. International and interstate commercial trade in *Erigeron rhizomatus* is not known to exist. It is not anticipated that many trade permits involving plants of wild origin would ever be issued since this plant is not common in the wild and is not presently in cultivation.

Section 9(a)(2)(B) of the Act, as amended in 1982, states that it is unlawful to remove and reduce to possession endangered plant species from areas under Federal jurisdiction. Section 4(d) provides for the provision of such protection to threatened plant species through regulations. This new protection would accrue to *Erigeron rhizomatus* when revised regulations have been promulgated. Permits for exceptions to this prohibition would be available. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417), and these would be finalized following public comment. *Erigeron rhizomatus* is known only from Federal lands.

Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

If this species is listed under the Act, the Service will review it to determine whether it should be considered for placement upon the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which is implemented through section 8A(e) of the Act, and whether it should be considered for other appropriate international agreements.

Public Comments Solicited

The Service intends that any final rule adopted will be as accurate and effective as possible in the conservation of any endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

- (1) biological or other relevant data concerning any threat (or the lack thereof) to *Erigeron rhizomatus*;
- (2) the location of any additional populations of *Erigeron rhizomatus* and the reasons why any habitat of this

species should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) additional information concerning the range and distribution of this species; and

(4) current or planned activities within the range of *Erigeron rhizomatus* and their possible impacts on the species.

Final promulgation of the regulation on *Erigeron rhizomatus* will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests should be made in writing and addressed to the Regional Director (see ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of

1973, as amended. A notice outlining the Service's basis for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References

- Cronquist, A. 1947. A revision of the North American species of *Erigeron* north of Mexico. *Brittonia* 6:121-302.
- Fletcher, R. 1978. Status report: *Erigeron rhizomatus*. U.S. Forest Service, Region 3. Albuquerque, New Mexico. 5 pp.
- Martin, W.C. and Hutchings, C.R. 1981. A Flora of New Mexico. J. Cramer, Germany, xiii + 2591 pp.
- Sabo, D.G. 1981. Status report: *Erigeron rhizomatus*. Office of Endangered Species, U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 16 pp.

Authors

The primary author of this proposed rule is Sandra Limerick, Endangered Species staff, U.S. Fish and Wildlife Service, Department of the Interior, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972). Status information and a preliminary listing package were provided by D. G. Sabo, P.O. Box 2267, Albuquerque, New Mexico 87103. E.

LaVerne Smith and John Paradiso of the Office of Endangered Species served as editors.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 98-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding, in alphabetical order under Asteraceae, the following to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and Threatened Plants.

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(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family						
<i>Erigeron rhizomatus</i>	Rhizome fleabane	U.S.A. (NM)	T		NA	NA

Dated: April 13, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

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